HR Weekly Podcast
07-23-2014

Today is July 23, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's topic concerns a recent district court decision involving intermittent leave under the Family and Medical Leave Act, or the FMLA.

The FMLA allows eligible employees with serious health conditions to take intermittent leave related to their medical condition. An employer may require a medical certification from a doctor, which must be deemed sufficient if it includes the dates of the expected treatment, the medical necessity of intermittent leave, and the expected duration of the intermittent leave. If the employer disagrees with the initial medical certification, a statutory process authorizes the employer to request second and third opinions and to require its employee to obtain a subsequent recertification on a reasonable basis.

To try to minimize intermittent FMLA leave abuse, Oak Harbor Freight Lines, Inc., instituted a uniform policy requiring an employee taking intermittent leave to submit a medical provider's note for each absence. Although not required actually to see a doctor, the employee only needed to ask the doctor's office to provide a brief note confirming the reason for the absence.

Oak Harbor brought suit against two employees who took intermittent leave, seeking declaratory judgments that its policy did not violate the FMLA. One employee, Robert Argyle, took intermittent leave over a six-year period that fell adjacent to a holiday or weekend almost 89 percent of the time. Similarly, the second employee, Chad Antti, took intermittent leave that coincided with a holiday or weekend 94% of the time. The employees counterclaimed alleging disability discrimination, and the lawsuits were consolidated in the federal district court's opinion.

The federal district court held that Oak Harbor's requirement that employees on intermittent leave provide a doctor's note for each absence violated the FMLA. The court reasoned that the FMLA provides a fairly rigid process to document an employee's medical condition, suggesting that Congress intended to control the way an employer may obtain information from an employee's doctor. The court also noted that regulations from the Department of Labor "suggest by implication that information from a doctor must come only in the guise of a medical certification." The court concluded that "[Oak Harbor's] requirement that its employees on intermittent leave provide a doctor's note for each absence is tantamount to requesting a medical certification for each absence." Consequently, Oak Harbor's policy directly conflicted with the FMLA's explicit recertification procedure designed to prevent abuse.

If you have questions about this topic, please contact your HR consultant at 803-896-5300. Thank you.